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REMARKS BY DR. BETSY ANCKER-JOHNSON BEFORE THE
SEMINAR ON TECHNOLOGY EXCHANGE
THE DEPARTMENT OF STATE
WASHINGTON, D.C. FEBRUARY 28, 1974

"The Role of Industrial Property Rights Protection
in U.S./U.S.S.R. Technology Transfer"

Introduction

Research and development leading to high technology products are very costly as we all know. These high costs must be successfully recovered and recommitted if a company is to continue building its high technology base. Research and development costs are normally recouped not only by marketing the resultant products but also by the licensing of new technology. In some cases, selling the products is the most efficient way to recover costs; this is especially true if the market for that product can be expanded so that the cost per unit is reduced (learning curve effect). On the other hand, research

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and development costs are sometimes fully recovered and even exceeded by licensing the new technology. This has been the case with Xerox processing, for example. And of course, many companies, such as pharmaceuticals, pursue both goals. Typically, they recover about 10 per cent of their R&D costs through licensing while simultaneously marketing products.

The governments of all industrialized nations recognize the importance of giving protection to intellectual property and industrial knowhow. Internationally, protection is coordinated by an agreement on industrial property signed in 1883, and last revised in Stockholm in 1967, called the Paris Convention for the Protection of Industrial Property. In 1965, the Soviet Union became a signatory to this Convention ^{what is now called} and also joined the World Intellectual Property Organization. Of course, the patent system of each member country differs as to what is patentable and how a patent is granted.

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Today I shall discuss some aspects of industrial property protection, particularly comparing the U.S.S.R. patent system with ours. Such a discussion is needful because of the mismatch between the ^{Soviet} monolithically planned economic system and our free enterprise system.

Industrial property became a significant issue between the U.S. and the U.S.S.R. when the ^{1972/1973} Agreement on Exchanges in Scientific, Technical, Educational, Cultural and other fields was signed in April, 1972. This Agreement includes a section on patent management and licensing.

In 1973 I headed a U.S. delegation of industrial property experts on a visit to the Soviet Union. Our main mission was to determine the patent and licensing aspects of bilateral trade with the U.S.S.R. We were interested in the nuances of each step required to obtain a U.S.S.R. patent and the avenues of bringing together prospective licensees

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with the patent holder. A Soviet group made a return visit to the U.S. in October. During that reciprocal visit, we prepared draft terms of reference on intellectual property rights for the U.S./U.S.S.R. Joint Commission on Science and Technology. The Commission approved these in Moscow in December, 1973. I'll return to this subject.

A summary report of the U.S. Patent and Licensing Delegation findings entitled: "U.S./U.S.S.R. Technology Licensing Prospects 1973" is available from the Department of Commerce's National Technical Information Service (NTIS). This report contains a brief account of our impressions and provides current information regarding the marketing of technology. A more comprehensive report is being published by the Licensing Executives' Society. Members of this society, which specializes in technology transfer and in industrial property rights, were active members of all our patent management and licensing exchanges.

The New Soviet Statute on Discoveries, Inventions, and Innovation Proposals

The new statute which took effect January, 1974, elevates

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(C.I.D.)
the Committee for Inventions and Discoveries to a State
Committee, making its Chairman a member of the Soviet Council
of Ministers. The official translation won't be available
for several months; however, Chairman Maksarev sent me an
unofficial version. The Committee now has greater influence
on Soviet economic planning and the power to authorize
the use of new inventions whenever it feels such action is
appropriate, rather than once yearly as was the case previously.
The Committee has also gained greater responsibility in the
filing of foreign applications.

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It is interesting to note that the Soviet law provides recognition for the originators of scientific discoveries. Perhaps you know that the Soviets have been urging the establishment of an international depository certifying scientific discoveries. In fact, last November, at a meeting in Geneva, they urged that the World Intellectual Property Organization become the functioning body. However, their proposal met with a cold shoulder from the non-socialist bloc, which prefers to base rewards on scientific reputation rather than government sanction. The world scientific community, of which some of us were members before we became executives, has its own unwritten rules for judging the contributions of individual scientists. Evidently, the Soviets are intensely pursuing international recognition of their scientific discoveries.

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Soviet System of Industrial Patent Protection

The new statute provides (as did the old) for a dual system of granting both inventor's certificates and patent issued by C.I.D. after examination of the application.

Inventor's Certificates: The inventor's certificate involves transferring all invention rights to the State. The inventor receives in exchange a remuneration of up to 20,000 roubles (about \$28,000) and certain fringe benefits, such as augmented pensions and preferential treatment in employment, housing, and the like. Applicants bear no expense in applying for the certificate. Certificates are exploited by the State and may be used by any Soviet enterprise.

Only 2 Soviet nationals received a patent, whereas about 39,000 nationals received Soviet inventor's certificates in 1972. For comparison approximately 39,000 U.S. patents were granted to U.S. companies out of a total of about 53,000 patents granted for domestic inventions in 1972.

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Soviet Patents: The Soviets grant patents primarily for the benefit of foreign entrepreneurs. They introduced the patent system in 1959 to, as the Soviets put it: "Create a legal basis for economic cooperation of the U.S.S.R. with Western countries."

However, the benefits of the Soviet patent system are restricted by the Soviet economic system. Since the means of production are exclusively under State control, it is impossible to use a Soviet patent to set up a manufacturing plant and produce the patented item. Instead, the patent owner must either

(more)

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sell his patent rights to the U.S.S.R. or sell a license for its use.

Comparison of the U.S. and Soviet Patent Laws: Soviet patent law is similar to that of many countries, especially as it pertains to the subject matter forming a basis for patents and the conditions for patentability.

Term: The term of a Soviet patent is fifteen years, measured from the date of the filing of the application. In the U.S., the patent term is seventeen years from the date of the grant.

Subject Matter: The subject matter which may be covered by the two grants is generally co-extensive, except Soviet law excludes as a basis for patents certain subject matter such as chemicals, pharmaceuticals, and medical processes, although they may qualify for inventor's certificates. Prior to the new law this subject matter was not an acceptable basis even for inventor's certificates. Hopefully, patents for chemical processes will evolve later on.

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Conditions of Patentability: The Soviet conditions are rather similar to ours. That is, an invention must be new, useful and non-obvious over the prior art.

Novelty: Both use the system of "universal prior art" as negating novelty. In the U.S. there is a one-year grace period from divulgation of the subject matter during which one may file in the U.S. Patent Office without losing the right to a patent. The Soviets have a six month grace period from displaying the invention at an exhibition, and four months from "open utilization of the invention."

Priority of Invention: The Soviets accord priority to the first party to file with the C.I.D. unless foreign priority rights have been established under the Paris Convention. I'll return to foreign priority rights shortly. This system of "first to file," which is almost universally followed today, is easier to administer than our system of "first to invent." Our system requires a rather expensive and complex "interference" proceeding before the Board of Patent

Interferences in the U.S. Patent Office.

Government Fees for Securing and Maintaining A Patent:

There is an average cost of \$235 to secure a patent in the U.S., whereas this cost in the Soviet Union is about \$76. On the other hand, there are no maintenance fees in the U.S., whereas maintenance fees in the Soviet Union amount to several thousand dollars if the patent is maintained for its maximum term. Incidentally, all of the above figures omit costs of the services of patent representation before the respective offices, which in the case of Soviets means the U.S.S.R. Chamber of Commerce and Industry.

Representation Before Offices: The Soviet Union requires foreign applicants to use the service of the U.S.S.R. Chamber of Commerce and Industry both to file their applications and represent them before the C.I.D. In the U.S., of course, foreign applicants are free to select one of 9,000 registered patent attorneys or agents to represent them before the U.S. Patent Office.

Compulsory License to State: Soviet law specifies

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that a patented invention of special importance to the State may be compulsorily licensed. This raises some fears in U.S. industrial quarters. However, this provision, dating back to 1959, has never been employed. Incidentally, this stipulation is not unique. For example, the British have such a provision relating to, as they put it, "Crown use." Our law provides that reasonable and entire compensation must be awarded for patented subject matter used by the U.S. government and the awards to patentees under this provision have been numerous.

Validity of a Patent: Both in the Soviet Union and in the U.S., the validity of a patented invention may be challenged during its term. In the Soviet Union the protest is lodged with the C.I.D. while in the U.S. such a problem is litigated in Federal Court.

Right of Priority under Paris Convention: As stated earlier, the patent priority goes to the first to file in the U.S.S.R. Under the Paris Convention an applicant may apply for protection in all the other contracting states

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within one year from his first application. Later applications, within one year, in the U.S.S.R. (or any member of the Paris Convention) receives an effective filing date which is the same as the date of ^{the original} / filing. This filing date will not be invalidated by any interim acts (e.g., publication or exploitation of the invention).

Previously, inventor's certificates could not qualify, under the U.S. view, for priority rights. However, inventor's certificates may now qualify as a result of the 1967 version of the Paris Convention.

The relevant section of the Convention directs that the date of filing of an application for an inventor's certificate filed in a country in which applicants have the right to apply at their own option either for a patent or for an inventor's certificate shall determine the right of priority under the Paris Convention. This provision obviously is directed to such countries as Bulgaria, Romania and the Soviet Union which provide alternatively for patents or inventor's certificates on some types of inventions.

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The treaty provision protects us in various ways. For example, we do not give priority rights in pharmaceuticals based on earlier filed certificates since we cannot obtain pharmaceutical patent rights in the U.S.S.R. It should be remembered that under Soviet law any invention created in the course of employment cannot be patented (i.e., the inventor obtains a certificate).

In the U.S.S.R.
Activity by U.S. Citizens/Since Soviets Signed Paris
Convention:

<u>Year</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>
Patent Applications	87	165	347	423
Patent Grants	7	3	35	65
<u>Year</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>
Patent Applications	492	512	567	816
Patent Grants	82	199	196	257

Retroactive Patent Recognition Proposal

The U.S. Government has been requested by a U.S. company to consider a proposal to negotiate a bilateral agreement with the Soviet government for recognition of U.S. held high technology patents filed in the U.S. prior to 1965 but not filed in the USSR. While recognizing that U.S. companies customarily negotiate individually for patents and that any nationwide arrangement is extraordinary, an advocate urges that special protection of U.S. interest in high technology is needed.

Let me outline the basic problem. Until just a few years ago, many U.S. companies - including those in certain high technology areas - did not apply for patent protection in the Soviet Union. This was principally because export controls and/or the general climate of East-West relations made it impossible for them to export their technology to the Eastern Bloc. Today such a company may find itself at a disadvantage when it negotiates with the Soviet Union. Such a company has lost much of its leverage for receiving royalties on the use of its technology. In many cases, it has no way to control the flow of its technology into the Eastern Bloc from a third party.

The solution proposed is that the U.S. and the U.S.S.R. give retroactive recognition to each other's patents. Existing manufacture would be recognized under this arrangement.

As we study the possibility of retroactive patent recognition, we would like to have your comments. My personal opinion, at this point in time, is that the retroactive approach may create more problems than it can solve. However, the study I mentioned will determine whether or not, on balance, retroactive protection is desirable.

A few of the pros and cons on the proposal are:

Pros:

1. It would mean the accrual of more licensing fees and royalties.
2. It would reduce the possibility of pitting competing U.S. firms against one another to reduce the return on U.S. technology.

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3. It would contribute to detente.

Cons:

1. It would be necessary to offer similar treatment to other nations under some "most favored nation" agreements.
2. U.S. liabilities are uncertain. A large volume of foreign patents and inventor's certificates would be presented for retroactive protection in this country.
3. The principle of intervening rights would afford Soviet access to confidential technical information to the possible detriment of U.S. firms. U.S. open discovery proceedings are considerably more liberal than the Soviet Union's.

And so we see the issue of retroactive patent recognition is fraught with complications. As I said we welcome your inputs on this proposal.

Let us now put this controversy aside and proceed to examine the trade possibilities that open up when one obtains a Soviet patent.

U.S./U.S.S.R. Foreign Trade

Soviet foreign trade is administered by the Ministry of Foreign Trade as part of an overall trade plan. The purchase of foreign goods and sale of Soviet products abroad is the responsibility of some 60 Foreign Trade Organizations (FTO's).

Each FTO has its own rules determining its legal status and specifying the sphere of its activities. Each is exclusively entitled to trade with other countries in its particular area of activities, to sell for export, to buy abroad, to fill its import requirements, and to consummate technology transfer via licensing.

Licensintorg

Until 1962, trade operations in licenses were carried out by the USSR foreign trade organizations. However, the expanding trade in licenses demanded the creation of a new FTO. This organization, Licensintorg, exercises monopolistic rights in the field of licensing, although other Soviet FTO's will buy licenses if they are ancillary to another contract (such as the acquisition of a plant).

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Licensintorg's functions are to buy, sell and exchange patents and licenses, and to carry on license operations throughout all industry. It operates as an independent economic organization on a commission basis, and acts as an agent in Soviet civil law for the Soviet organization. Licensintorg personnel are stationed at many of the trade delegations throughout the world and it also operates through agents in various developed countries. Mr. Vadim Volkov, for example, is the Licensintorg representative stationed in Amtorg Trading Corporation in New York City.

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Negotiation Problems

The negotiation of a trade contract with the USSR is typically fraught with impediments. In spite of the monolithic representation of the Soviet industry by S.C.S.T. in protocol negotiation, responsibility is, in fact, fragmented among the various Soviet departments which may be affected by the transaction. The powers of decision are likewise fragmented to provide checks and balances.

Communication at every possible stage of the negotiations from initial contact to the signing of a contract can be difficult. The cumbersome bureaucracy often keeps apart the technical experts on both sides and thus makes it difficult to identify licensable Soviet technology and prospective licensees of US technology.

The actual "face to face" negotiations between U.S. licensing executives and representatives of Licensintorg are often strained. The negotiators seem inflexible to us.

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only
Since / S.C.S.T. is
privy to all bids, the Committee may be tempted to play
one company against another, not only with respect to
licensing fees, but also with respect to the amount of
technology any company is expected to disclose without the
Soviets incurring an obligation to close a deal.

However, after having crossed all these hurdles, most U.S.
companies find so far that the Soviets do adhere to and
provided
honor the terms of agreements, / that the agreements are
meticulously drafted to protect rights. Let all companies,
however, take careful note that the intellectual properties
agreement signed by the U.S./U.S.S.R. Joint Commission on
Science and Technology that I referred to earlier does not
provide protection; it only states some guiding principles.

Ability to Police Patent Infringement

Another matter of concern to those seeking a Soviet patent
is the policy of patent infringement in the U.S.S.R. It
is impossible to evaluate either the existence of

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infringement or the efficacy of available remedies because of insufficient practical experience. However, our belief is that the Soviet system would not normally tolerate patent infringement. There are few Soviet patents to begin with and the system is replete with checks and balances to prevent infringement.

Furthermore, we know of no serious instance of improper ^{proprietary} invasion of / rights in recent years. In fact, the Soviets have significant cause to "lean over backwards" to avoid a charge of patent infringement. In the first place, it is obviously more economical in the long run to make satisfactory arrangements with the patentee for know-how associated with the patent technology than to develop it. Secondly, the flow of technology will inevitably depend on development of common ground rules and of relationships of trust, as in the case of trading goods.

Even though it is difficult to obtain information about possible infringements of patents in the Soviet Union, the Soviets are well aware that it would take only one

unfavorable infringement incident to dissipate the climate of confidence they are obviously cultivating.

Soviet Publications

Soviet interest in patents is extensive. This is manifested in many Soviet patent publications which receive minimal distribution in the U.S. For example, we obtained a 1967 handbook intended to guide applicants in drawing up applications for patents. We are translating this work and hope to make it available to you through the Technical National/Information Service (N.T.I.S.). Another Soviet publication which came to my attention just recently is a 1973 English-Russian Patent Dictionary that contains about 7,500 terms. I was surprised to find the organization chart of the U.S. Patent Office in its appendix! We are considering preparing a reverse dictionary.

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Soviet Patent Prospects

The problems and obstacles to be surmounted to obtain a Soviet patent must not be dismissed lightly. However, it appears that there are two principle advantages to warrant obtaining this patent protection, which should be considered by American businesses interested in penetrating the Soviet market:

First, a patentee is established as the legally recognized owner of the invention with the attendant advantage over foreign competitors in sales and licensing opportunities for the product.

Second, a patentee is in a stronger position to enter into and enforce contractual commitment concerning the use of his invention.

We have surveyed the theory of the Soviet patent system. What we now lack, I feel, is a lot of practical experience in industrial property^{rights}/exchange. Obtaining this experience may considerably impact the welfare of the United States.

Implications for U.S. Welfare

Research and development must be pursued vigorously to maintain

our technological lead. Accordingly, the U.S. government must make sure that the total technology transferred to the U.S.S.R. is not underpriced, jeopardizing our technological lead. (I am speaking here, of course, of technology that can be transferred under the Export Administration Act, amended in 1972, which controls exports affecting national security.)

U.S. Industry - Government Relationships

I wish therefore to ask you, as representative of high technology U.S. industry, whether you would benefit from coordination of technical activities to affect a fair recoupment of your R. & D. cost through licensing activities in the U.S.S.R. Our competitors abroad for Soviet trade often get more help from their governments than you do.

For your consideration, here are a few things we could do. I am eager to hear your reactions.

First, would it be useful if we collected and reported negotiating experiences of those U.S. companies who signed licensing agreements in the U.S.S.R.? (Counterpart information is already available to the Soviets). Confidential information would be deleted. The Department of Commerce already

maintains a voluntarily provided, confidential file of protocols signed by U.S. companies. It is incomplete of course, and therefore may not be useful for statistical analysis.

Second, would you benefit from statistics on how many American held U.S.S.R. patents result in licenses?

Third, would it be helpful if we were to provide a regular report on the subject matter of scientific and technological agreements with the U.S.S.R.? Perhaps U.S. business could benefit from the implications of this information on U.S.S.R. priorities for future trade.

Fourth, would it be helpful if U.S. companies faced the Soviet government on an industry-by-industry basis, with industry and government representatives forming a consortium for the protection of U.S. interests? Of course, such an arrangement may have antitrust implications and would have to be explored with the Justice Department.

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I believe that the Soviet government is anxious to purchase U.S. technology and that we can win increased protection for our industrial property rights under their law. This sidelight will illustrate their intensity of purpose: I have recently learned that a Soviet think tank is studying a model of a multinational

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company composed of a U.S. firm with a Soviet industry branch! It would seem they are seriously thinking about new ways of doing business with us.

Conclusions

As cooperative agreements between U.S. companies and the U.S.S.R. become more specific and as more experience is gained in licensing and in adjudicating disputes that may arise. we will gain a better feel for the way the Soviets treat intellectual property of others. I expect the Soviet government will abide by the cooperative agreements they make given the current political climate. However, each company must obviously weigh the risks of technology loss which might result from a change in the political climate between our two countries.

U.S. companies must understand, as I have stressed, that government agreements do not protect U.S. industrial property. Each specific agreement between a U.S. company and the S.C.S.T. (or an industrial ministry) must clearly spell out all of the required protection. Testing the waters by first immersing a toe is the policy many of you will favor. On the other hand, we don't want to

lose the 100 meter freestyle event to our competitors

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abroad because we are overly cautious in testing the water temperature. Hence, these first agreements you are signing ought to be significant enough to determine if mutually beneficial trade with the U.S.S.R. is in the offing.

The intellectual property risks increased trade with the U.S.S.R. pose are difficult to assess. Monitoring of licensing agreements in a society which restricts travel of foreigners and in which access to government agencies as well as to industrial facilities is tightly controlled is clearly difficult. Monitoring the quantity of production under license is another problem. Probably most significant is the fact that once our industrial property is transferred to any enterprise in the U.S.S.R. it becomes accesible to all Soviet industry, though in principle this may be restricted by contractual agreement.

U.S. industry has had a most enviable record of achievement in competition. Industry leaders are very capable of seeing the overall technical picture in the areas of their competence and assessing the impact of the agreements they sign on the U.S. technical lead. The difficulty for each high level decision-maker lies in the balancing of his stockholders'

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immediate interests and their long-range interests; in balancing a possible short-term gain via an industrial property transaction against the long-range interests of U.S. industry as a whole. It is my conviction that a decided technological lead is not only necessary for the well-being of individual companies but also of our country--and in my opinion even for the maintenance of world peace.

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FOR RELEASE THURSDAY
FEBRUARY 28, 1974

TECHNOLOGICAL EXCHANGE WITH
USSR COULD BE ADVANTAGEOUS

The U. S. "can achieve a favorable balance of economic and political advantages by engaging in a program of technology exchange with the U.S.S.R. if we know what we are doing, are neither awed nor seduced by the novelty of our task, and if we work carefully, thoroughly and wisely" said Under Secretary of Commerce John K. Tabor today.

Tabor cited numerous areas in which the Soviets had technology valuable to the U.S. He noted U.S. export controls which prohibit all deliveries of strategic items, and warned against "technology seepage" during negotiations for licensable transactions. In addition he cautioned U.S. sellers against overlooking the premium they should be charging for single sales having multiple use.

Noting that political objectives and private economic objectives of U.S. -Soviet technology exchange "may sometimes conflict," he said "this situation calls for a close degree of Government-industry inter-relation in these circumstances."

Tabor concluded by saying:

1. President Nixon has placed the U.S. and U.S.S.R. on a constructive path in taking us away from confrontation and to negotiation and trade.
2. Negotiation and trade must be done from a position of military and commercial strength.
3. In the purchases and sales of technology, minimal security safeguards are provided by export licensing, but assurance that technology is not lost through seepage nor sold short, or too cheaply depends also upon the knowledge, skill and care with which our sellers and buyers deal.

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4. The Department of Commerce stands ready to bring its knowledge and skills about the state of Soviet art and their method of dealing to bear on all negotiations by private companies, upon request.

5. The Department of Commerce believes it entirely appropriate to develop additional techniques to assure against seepage and to arm U.S. firms with all best advice and assistance without violating companies' proprietary interest. We regard this kind of conference as one such method of working towards that goal.

Tabor spoke at the Seminar on Technology Exchange with the U.S.S.R., at the U. S. Department of State. The full text of Under Secretary Tabor's remarks is attached.

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REMARKS BY
UNDER SECRETARY OF COMMERCE
JOHN K. TABOR
SEMINAR ON TECHNOLOGY EXCHANGE WITH THE USSR
U. S. DEPARTMENT OF STATE
FEBRUARY 28, 1974 -- 9:30 A. M.

I.

I am pleased to share this platform with Under Secretary of State Bill Casey and would like to speak to you about "Conditions for a Successful Program of Technology Exchange with the USSR".

We are living in a time of great change. Many traditional premises have been challenged and new conditions have brought forth new policies. At times we feel uncomfortable, because we are groping across unfamiliar terrain towards new goals.

This is not a new experience for Americans. Our willingness to try new things, and new ways has been the source of our vitality and strength. It has tested our ingenuity and skill and toughness, and indeed developed those qualities. Once again we are so involved. You at this conference are frontline troops, as it were, in this new challenge.

Our discussion today is built on a new premise, namely that the era of total confrontation with the Soviet Union, the day of the Iron Curtain, the day of no interchange and no trade with the Soviet Union

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is no longer assuredly valid. Instead, under the leadership of President Nixon, we and the Soviets have recognized that that policy does not make sense in an era of mutual nuclear destruction, and we are mutually, but cautiously, reaching toward each other to determine whether we can evolve an era of negotiation from mutual strength. Part of that era is the development of trade, on mutually beneficial terms.

Let us from the outset be clear as to the potentials and the limits, of trade in building a structure of peace.

On October 11, 1973, in launching the President's Export Council, the President said:

"Now, first, I think it is well for us to understand what the limitations of trade are in building of our peaceful world. I notice in my talking points, it was indicated that if we have trade that automatically will lead to peace. Of course, that isn't true at all. As a matter of fact, if we look at World War I and World War II we will find that nations that traded with each other fought each other. Japan and the United States in World War II are good examples, and, of course, Britain and France and Germany in World War I and World War II are examples of that.

"So trade between nations, no matter how great it is, does not necessarily lead to peace.

"But having stated the negative proposition, let's also understand some of the positive points that can be made about trade and how it can help in building a structure of peace.

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"The first is that trade leads to communication between peoples, not just governments, but peoples, and communications between peoples I very sincerely believe -- having taken some role in opening communications with other nations in the world over the past four and one-half years, opening communications with nations with which we had not had communications before -- I believe that as we increase communication between peoples at all levels, the opportunity of discussing differences rather than fighting about differences is greatly increased.

* * * *

"And then, of course, there is another broader point that should be made. As the nations of the world have a greater stake in peace, they have a less incentive to wage war. And as we have more expanded world trade, trade with all nations, it means that nations which otherwise might be tempted to wage war because of their concerns about inability to move up their standard of living at home could develop a stake in peace. I firmly believe that."

Wednesday evening of this week at the White House, toasting the Soviet Minister of Trade, Mr. Patolichev, the President summarized this view by saying that trade could be "the cement holding together the bricks" in the structure of peace. Note, it is not the bricks, -- but it can be "the cement".

Last year, operating on this principle, the Soviets were the source of our largest trade surplus -- \$976 million. Total trade reached \$1.4 billion. This was double our 1972 trade with the USSR.

Our January 1974 trade with the Soviets, announced yesterday, totaled \$81 million, and produced a surplus of \$30 million.

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II.

The Soviets are particularly interested in acquiring our technology, either in naked or embodied form. Hence it is a proper subject for us to consider here today. We of Government and you of industry come together to define the proper conditions for U.S. -Soviet technology exchanges.

Overall, my message is simple: U.S. -Soviet technology exchanges can and should be mutually profitable and beneficial, but from our point of view they will be only if we use every bit of knowledge, skill, toughness, and instinct which characterize the early Yankees who started this nation on its way to prosperity.

Let me define for a minute what I mean when I speak of technology. The term means to me basic research and development, blueprints reflecting the application of such research, equipment and systems which embody some research and development, and management and production techniques which convert that basic research and development into profitable production.

The transfer of technology can occur through licensing, sales of goods and services, or by merely exchanges of information in conferences, conversations, and indeed in bargaining sessions connected with hoped-for deals.

III.

Using the terms so defined, the first question we should answer is whether U.S. -Soviet technology exchanges can be mutually beneficial. Can we receive as much as we give? Obviously, here as in any business relationship,

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the agreement must be mutually beneficial or in short order it will break down. I was interested to hear Minister Patolichev state this as a basic premise on which he says Russia operates.

Clearly it must be the basis upon which private companies and the U. S. Government operate.

I submit to you that agreements involving technology exchanges between the USSR and either the U. S. Government or U. S. private companies can be quite beneficial to the U. S.

First, the Soviets lead the U. S. in some important technological areas. They have large programs with unique and valuable breakthroughs in metalworking, engineering plastics, hydro-electric power and high voltage transmission techniques. They are moving rapidly in fusion research. They are said to have made significant advances in organic metallic chemistry. Experts advise me that they lead the world in the development of magneto hydro-dynamic power generators, which can generate electricity directly from coal combustion, an item of more than passing interest to the U. S. in this time of energy problems for us and much of the world.

Further proof of Soviet technological leadership in certain areas are the new technology we have already obtained from them such as a new low-cost method of extracting magnesium, new processes

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for cooling blast furnaces, remelting metals and smelting aluminum. We have purchased from them equipment for casting aluminum ingots and manufacturing thin-walled tubes of hard metal.

Some authorities hold that the Soviets are strong in research, particularly in theoretical fields such as physics, chemistry, and mathematics. On the other hand, they experience major problems on moving their laboratory research into commercial production. Here is obviously a beckoning basis of mutually beneficial interchange, for our greatest talent is practical application of new ideas in bold and creative management and production techniques.

Second, a general characteristic of Soviet research and development indicates potential benefits to the U. S. Here we produce for a market. We must make a profit. Therefore our industries concentrates on their resources or highly reliable, efficient cost effective equipment. The Soviets have somewhat different constraints. They cannot fail totally any more than we, but they may be ready to pour greater amounts of their national resources into solving particular problems, taking greater risks in developing advanced prototypes. Where this is successful there is the possibility that in such technologies we can save early phase R&D costs, taking

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advantage of their successful engineering design data and experience, scaled up at considerable national expense, from bench size. Here we are offered the opportunity to leap forward where the Soviets have been successful and to avoid areas where they have failed.

Third, technology exchange with the Soviets, as with anyone else, can lead to broader commercial involvement as related products are sold or exchanged and related technologies follow each other.

In a similar way, the acquisition of advanced technology by either party creates a race with obsolescence generating continued pressures to maintain or expand relations to take advantage of on-going technological innovations. This maintains the momentum of development as well as encouraging a stronger fabric of trade relations between central economy countries and the balance of the international economic system.

On the other side of the equation, it seems quite clear that the Soviets are keenly interested in certain products and technologies we have developed, particularly in the consumer or non-military sectors. Some Americans express valid concerns that if we are foolish, we may close the consumer gap in the USSR which has been created by Soviet concentration on armament and defense spending, without advancing our consumer sector commensurately. And this is a risk.

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There is no question that the Soviets intend to improve their overall economic strength, just as we do.

Their labor productivity is estimated at 40% of our own. They want U. S. and western technology and equipment to increase that productivity. They hope to use imported technology to improve their transportation system, their extractive industries and the quality and range of consumer goods available to their people. Moreover, the new industrial capability thus gained will generate products which can be sold abroad, in competition with ourselves. All this we must bear in mind as both the U. S. Government and our private companies trade with the USSR.

IV.

Can we then achieve a favorable balance of economic and political advantages by engaging in a program of technology exchange with the USSR?

I believe the answer is yes, if we know what we are doing, are neither awed nor seduced by the novelty of our task, and if we work carefully, thoroughly and wisely.

Government has a duty to assure adequate protection of our security. Therefore, our government, through a system of export controls, prohibits all deliveries of strategic items, whether as raw technology or embodied technology. Our Department of Commerce Office of Export Administration approves or disapproves exports to

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the USSR. This is done in close cooperation with Defense, State and other Departments. Likewise, an international coordinating committee, including most of the NATO allies and Japan, operates a system of export controls multilaterally. It obviously behooves any person trading in technology, naked or embodied, to make early contact with the Office of Export Administration to be sure that delivery can be made if an agreement is reached with the Soviets. Commerce welcomes the opportunity to give advisory opinions, and Commerce can be helpful by informing you, the sellers, of what we know about the state of knowledge of, and the true value to the Soviets of the technology you are seeking to sell.

We also respectfully caution you that the Soviets will bargain hard, will press you for specifics in the technology before any agreement is reached, just as some of your trading partners in this country may do seeking to learn as much as possible while giving as little as possible. Our suggestion here to those of you in the private sector is keep your guard up and in the best commercial sense be sure you get paid for what you give, and give only what you are paid for, under licensed transactions.

Whether this suggestion, and the profit motive are sufficient protections against possible technology wastage is a matter under most serious consideration by the government at this time. We shall listen to your comments most interestedly, here, on this point.

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This raises another matter. Are you getting paid enough for what you give?

It is the other side of the balance -- not protection, but how we are to reap our full share when technology exchange takes place -- that demands skilled management. There are special concerns given the peculiarities of the U.S.-Soviet relationship. For example, because we are dealing with a centralized, state owned and operated economy, U. S. sale of a given technology takes place just once. The process or product is then distributed appropriately throughout the Soviet economy. For that matter, technology sold in eastern Europe, unless specifically restricted by contract, may find its way rather quickly to the Soviet Union as some western European firms have discovered. Thus, the U. S. seller has not only the difficult problem of evaluating his technology, but also the question of premium to be charged for multiple use. If the technology in question is a U. S. national monopoly, it carries an additional worth, even though more than one U. S. firm may possess it.

Another aspect of the same problem, of being paid enough for what is sold, arises because of the comment from several American firms that once a technology has been sold to the Soviets, the seller

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has no control over its end use, no share in the results of the utilization, and really, no way to monitor effectively the process of utilization. Therefore, it behooves the seller to obtain the maximum price for a one-time sale. He may wish to include in his contract payment provision for any additional improvements in technology in proportion to their share of original R and D costs.

Finally, there is the problem of having sufficient knowledge and information about Soviet technology to know their degree of need. Information about Soviet technology which might be of interest to you as firms often seems to fall in the category of a State secret. You sometimes don't know what they have to sell, much less whether you are interested in buying it.

Obviously, the USSR would not initially permit U. S. businessmen to go on a wide-open fishing expedition in the archives of their technology. So it is incumbent upon the U. S. businessman to make prior determination concerning the technology gaps he wants filled, and to ask the Soviets for this specific technology. If he fails, after a number of requests, to obtain any indication of Soviet technology in these areas, he is then in a position to say forthrightly, "What do you have?" Perhaps he will get an answer.

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V.

Even with these suggestions, however, there remain problems as well as opportunities in dealing in exchanges of technology between the U. S. and the USSR.

In situations where the technology transfer takes place through Government to Government agreements, all U. S. officials operate under policy guidelines emphasizing the mutual and cooperative nature of these agreements. Chairmen of some 41 specific interchange projects currently operating under the umbrella-type agreements are responsible for building genuine reciprocity and mutuality into each program. Each of these agreements will likewise be subject to a policy review by the National Security Council, Under Secretaries' Committee.

The licensing procedure enforced as to actual sales and transfers of technology by the private sector certainly assures that the embodied technology, the actual blueprints, the on-site deliveries of know-how is reviewed. There is still in the American business and industry community a very clear belief that appropriate Government action to protect American technology should be taken. The special concern relates to "technology seepage" after initial contacts are made,

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during negotiations and prior to the request for licenses. Forums such as this alerting sellers to some of the pitfalls are helpful to avoid such seepage. Discussions among yourselves based on the experience of dealing with the centralized purchasing power of the U.S.S.R., literally swapping experiences, will be helpful; and there is much merit to finding new ways to coordinate the fragmented activities of our sellers as they deal with the centralized Soviet buyer. We want to do so in a way that does not impinge on or alter our economic system or violate company proprietary interests. We need a pooling of pertinent information on the experience gained through such exchanges, and a mechanism of dissemination of appropriate general guidance and advice to U.S. firms.

In addition, it is becoming clear that the political objectives and the private economic objectives of U.S. -Soviet technology exchange may sometimes conflict. Individual economic profit and national interest do not always coincide. Again, this situation calls for a close degree of Government-Industry inter-relation in these circumstances.

With these needs in mind, the State/Commerce Interagency Working Group was formed to analyze the broad implication of U.S. - Soviet technology flows for the U.S. national interest, and to respond

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to requests from U.S. firms with advice and assistance. Such a plan is possible only if we achieve and maintain a constant Government-Industry dialogue, of which today's meeting is a part.

The Interagency Group marks progress towards Government-Industry cooperation, as does the Bureau of East-West Trade in the Commerce Department. The Bureau has been providing U.S. firms with advice and assistance on East-West trade for over a year, and it also administers the Office of Export Administration. I speak for the Bureau of East-West Trade and the Office of Science and Technology of the Department of Commerce in general when I say that we strongly support the concept and practice of Government-Industry inter-relation in coordinating the flow of technology between the U.S. and the Soviet Union. We stand ready to help you in any way we can.

Summarizing, I would say:

1. President Nixon has placed the U.S. and the U.S.S.R. on a constructive path in taking us away from confrontation and to negotiation and trade.
2. Negotiation and trade must be done from a position of military and commercial strength.

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3. In the purchases and sales of technology, minimal security safeguards are provided by export licensing, but assurance that technology is not lost through seepage nor sold short, or too cheaply depends also upon the knowledge, skill and care with which our sellers and buyers deal.

4. The Department of Commerce stands ready to bring its knowledge and skills about the state of Soviet art and their method of dealing to bear on all negotiations by private companies, upon request.

5. The Department of Commerce believes it entirely appropriate to develop additional techniques to assure against possible seepage and to arm U. S. firms with all best advice and assistance without violating companies' proprietary interest. We regard this kind of conference as one such method of working towards that goal.

Thank you.

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1. PLEASE INFORM DR. FUSFELD, PRESIDENT, INDUSTRIAL RESEARCH INSTITUTE (IRI), THAT SOVIETS WILL NOT REPEAT NOT ATTEND THE IRI MEETING IN CHICAGO OCTOBER 17-19, 1973. PRONSKIY IS SENDING LETTER DATED OCTOBER 4 TO FUSFELD STATING THIS IN RESPONSE TO LATTER'S LETTER OF AUGUST 15.

2. FYI: ACCORDING TO CHEREMKINA OF SCST, SOVIET INTENTION WAS TO SEND SCIENTIFIC COUNSELOR FROM SOVEMBASSY WASHINGTON TO IRI MEETING, WHO WOULD SERVE AS SOLE SOVIET REPRESENTATIVE. HOWEVER, BELOV HAS COMPLETED HIS TOUR INHAASHINGTON AND HIS REPLACEMENT WILL NOT HAVE ARRIVED IN TIME TO ATTEND MEETING. SHE SAID THAT CURRENT PLANS INCLUDE SENDING SOVIET TO MAY, 1974 MEETING (PROBABLY THE NEW SCICOUNS). AS TO FUSFELD'S SUGGESTION OF A JOINT SYMPOSIUM EARLY NEXT YEAR IN NEW YORK ON R & D ORGANIZATION, SCST IS PREPARED TO BEGIN PLANNING SUCH SYMPOSIUM AND TO HAVE STRONG SOVIET PARTICIPATION. END FYI.
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